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May 23, 2008

VIA ELECTRONIC FILING

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Re: Application of Duke Energy Carolinas, LLC for Approval of Decision to Incur Nuclear
Generation Pre-Construction Costs for the Lee Nuclear Station in Cherokee County
Docket No.: 2007-440-E

Dear Mr. Terreni:

Enclosed for filing please find the Joint Proposed Order submitted on behalf of the South Carolina Office of Regulatory Staff and the South Carolina Energy Users Committee in the above referenced matter.

By copy of this letter we are also serving all other parties of record. Do not hesitate to let me know if you have any questions.

Sincerely,

C. Lessie Hammonds

cc: Parties of Record

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2007-440-E – ORDER NO. 2008-

In Re:)	
)	
Application of Duke Energy Carolinas, LLC)	ORDER APPROVING
For Approval of Decision to Incur Nuclear)	DECISION TO INCUR
Generation Pre-Construction Costs)	PRECONSTRUCTION COSTS

I. INTRODUCTION

This matter is before the Public Service Commission of South Carolina (“the Commission”) pursuant to S.C. Code Ann. §58-33-225 and the Application of Duke Energy Carolinas, LLC (“Duke Energy Carolinas” or the “Company”) for approval of the Company’s decision to incur preconstruction costs for two units at the proposed William States Lee, III Nuclear Station in Cherokee County, South Carolina (“Lee Nuclear Station” or “facility”).

The South Carolina Office of Regulatory Staff (“ORS”) was a party to this proceeding pursuant to statute.¹ Friends of the Earth (“FoE”) and the South Carolina Energy Users Committee (“SCEUC”) intervened in this matter. The hearing was held at the Commission offices on May 6, 7 and 12, 2008, with the Honorable G. O’Neal Hamilton, Chairman, presiding. At the hearing, Frank R. Ellerbe, III, Esquire and Lawrence Bowen Somers, Esquire represented Duke Energy Carolinas. Robert Guild, Esquire represented FoE. Scott Elliott, Esquire represented SCEUC. Nanette S. Edwards, Esquire and C. Lessie Hammonds, Esquire

¹ S.C. Code Ann. §58-4-10 (B). More specifically, S.C. Code Ann. §58-33-230(F) states that ORS shall “safeguard the public interest in all matters arising under this article. It shall have full audit rights related to all matters arising under this article and shall review the reasonableness and necessity of all costs to be recovered under this article.”

represented ORS. M. John Bowen, Jr. made a limited appearance on behalf of Westinghouse Electric Company, LLC (“Westinghouse”) and Stone & Webster, Inc. (“S&W”).

By this Application, Duke Energy Carolinas seeks Commission approval of the decision to incur preconstruction costs to ensure that the Lee Nuclear Station remains an option to serve customer needs in the 2018 timeframe.

II. PROCEDURAL HISTORY

The Company filed its Application with the Commission on December 7, 2007. FoE and SCEUC petitioned to intervene in this matter on March 3, 2008, and January 31, 2008, respectively. The Commission instructed the Company to publish a prepared Notice of Filing in a newspaper of general circulation in the areas affected by the Company’s Application. The Notice of Filing indicated the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings. In the same correspondence, the Commission also instructed the Company to notify each customer affected by the Application. The Company furnished the Commission with an Affidavit of Publication demonstrating that the Notice of Filing had been duly published and with a letter in which the Company certified compliance with the Commission’s instruction to mail a copy of the Notice of Filing to all customers affected by the Application. The Commission issued a Revised Notice of Filing and Hearing in this matter on December 19, 2007, setting this matter for a hearing on April 17, 2008.

Pursuant to Order No. 2008-100 dated February 20, 2008, the Commission granted the Admissions of Lawrence Bowen Somers, Esquire and Kodwo Gahrtey-Tagoe, Esquire to practice before the Commission *pro hac vice*.

On April 4, 2008, Westinghouse and S&W filed a Notice of Limited Appearance in this docket to protect the disclosure of certain information sought by FoE and in the possession of the Company. On April 7, 2008, Duke Energy Carolinas and Westinghouse and S&W filed Motions for a Protective Order seeking protective treatment of certain commercially-sensitive, trade-secret and proprietary information sought by FoE. FoE responded and filed a Motion to Compel Discovery on April 14, 2008. In light of the filing of these Motions, the Commission revised the hearing date. Order No. 2008-287, April 14, 2008. Instead, the Commission heard oral argument on April 17, 2008 and issued Order No. 2008-327 ruling on the discovery motions and appointing B. Randall Dong, Esquire as Hearing Officer. At the hearing on oral argument, the Company sought a ruling from the Commission that all documents responsive to FoE's requests are confidential and should be produced under a protective order with the exception of those documents objected to by Westinghouse/S&W and Southern. FoE refused to enter into a confidentiality agreement and objected to the issuance of a protective order. In an effort to resolve the discovery dispute, ORS recommended to the Commission that a breakdown of the preconstruction costs (i.e. the \$230 million referenced in the Company's Application) and a range of the estimates of the total cost of the plant be provided to FoE but that any cost information above the \$230 million in preconstruction costs be subject to protective order. In ruling on the discovery motions, the Commission directed the Company to describe the nature of the documents withheld from production Requests Nos. 3, 4, 5, 8, 12, and 13, but held in abeyance any ruling on the Price Book and Transmittal Letter prepared by Westinghouse and S&W. The Commission ordered the Company to provide the Withdrawal Agreement sought by FoE in Request No. 9 and required the Company to provide to FoE the redacted portions of the Company's Annual Plan under a protective order. The Hearing Officer issued a Directive on

May 5, 2008 requiring the Company to allow FoE to visit the site for inspection and photography. The Directive also allowed the Company to maintain the confidentiality of those documents that would adversely impact the Company's ability to negotiate the lowest possible total cost of the plant. On May 12, 2008, Westinghouse and S&W filed to amend its Motion for a Protective Order to include certain additional documents included in the Company's list of confidential information.

On May 6, 2008, a merits hearing concerning the Company's Application was held in the Commission's hearing room located at Synergy Business Park, 101 Executive Center Drive, Saluda Building, Columbia, South Carolina. The full Commission, with Chairman G. O'Neal Hamilton, presiding was present and heard the testimony of Janice D. Hager, Managing Director, Integrated Resource Planning and Environmental Strategy for Duke Energy Carolinas. The hearing continued on May 7th with the testimony of Peter A. Bradford on behalf of FoE. On May 12th, Duke Energy Carolinas presented the testimony of Ellen T. Ruff (President of Duke Energy Carolinas), Dhiaa M. Jamil (Group Executive and Chief Nuclear Officer for Duke Energy Carolinas), and Julius A. Wright (a consultant). ORS provided the testimony of Nicholas Phillips, Jr. (a consultant in the field of public utility regulation) with the firm of Brubaker & Associates.

At the merits hearing the Commission overruled FoE's objection to the Company's request that the Commission take judicial notice of the Company's 2007 Annual Plan filed in Docket No. 2005-356-E.² The Commission also overruled FoE's objection to close the hearing room for that portion of Mr. Jamil's testimony concerning the Company's (confidential) estimate

² Counsel for FoE objected to admitting the 2007 Annual Plan into evidence based on the Company's failure to prefile the document as part of its application or testimony. Counsel argued that the offering of evidence was untimely and did not afford him an opportunity to appropriately examine it and conduct cross-examination based on it. Counsel further requested the Commission not make any findings based on the content of the 2007 Annual Plan.

for the total plant. On May 14, 2008, the Company submitted a breakdown of certain preconstruction costs as late-filed Hearing Exhibit No.3.

III. REQUIREMENTS FOR APPROVAL

In a project development application filed with the Commission and ORS, the Company shall (1) describe the plant being considered and shall designate the anticipated generation capacity, or range of capacity, of the plant and the projected annual capacity factors, or range of factors, of the plant; (2) provide information establishing the need for the generation capacity represented by the potential plant and the need for generation assets with the indicative annual capacity factors of the potential plant; (3) provide information establishing the reasonableness and prudence of the potential fuel sources and potential generation types that the utility is considering for the plant; and (4) provide such other information as may be required to establish that the decision to incur preconstruction costs related to the potential nuclear plant is prudent considering the information known to the utility at the time and considering the other alternatives available to the utility for supplying its generation needs.³

IV. STANDARD OF REVIEW

The Commission shall issue a project development order affirming the prudence of Duke Energy Carolinas' decision to incur preconstruction costs for the nuclear plant if the Company demonstrates by a preponderance of evidence that the decision to incur preconstruction costs for the plant is prudent. In issuing its project development order, the Commission may not rule on

³ S.C. Code Ann. §58-33-225 (C).

the prudence or recoverability of specific items of cost, but shall rule instead on the prudence of the decision to incur preconstruction costs for the plant.⁴

V. DISCUSSION

The testimony of Janice Hager was taken on May 6, 2008. Ms. Hager testified that Duke Energy Carolinas' load forecast reflects a 1.6 percent average annual growth in summer peak demand and 1.4 percent average annual growth in winter peaks and total energy usage.⁵ Witness Hager further testified that, "Given the uncertainties posed by future economic, environmental, regulatory, and operating circumstances, continuing to develop new nuclear generation as a resource option in the 2018 timeframe is prudent because the IRP analysis demonstrates that the Lee Nuclear Station has significant value for customers under multiple scenarios."⁶ Mr. Jamil testified that there is only one manufacturer in the world for some of the equipment required for the plant, and given the global demand for additional nuclear energy, the Company is taking this step to ensure that it has preserved the option to obtain the necessary equipment and keep its schedule.⁷

The only witness testifying in opposition to the Company's Application was Mr. Peter Bradford on behalf of FoE. Mr. Bradford asserted that the legislation passed by the General Assembly confers an "extraordinary benefit" on Duke Energy Carolinas in that risks are shifted from investors and lenders to the ratepayers.⁸ He asserted that the Company was unwilling to accept the investor risk that existed before the new statute.⁹ Yet, Mr. Bradford also

⁴ S.C. Code Ann. §58-33-225 (D).

⁵ Pre-Filed Direct Testimony of Janice D. Hager. Page 4, Ll. 7-9.

⁶ Pre-Filed Direct Testimony of Janice D. Hager. Page 14, Ll. 12-16.

⁷ May 12, 2008 Transcript. Jamil, pages 426-427.

⁸ Pre-Filed Direct Testimony of Peter A. Bradford. Page 5, Ll. 11-22.

⁹ Pre-Filed Surrebuttal Testimony of Peter A. Bradford. Page 3, Ll. 22-23 and Page 4, Ll. 1-2.

acknowledged that the legislature intended to change the balance of risk between the utility and the customers and that the purpose of the law is to encourage new nuclear construction.¹⁰

The testimony of Nicholas Phillips, Jr. of the firm Brubaker & Associates was taken on May 12, 2008. Witness Phillips, testifying on behalf of ORS and in support of preserving a nuclear option, stated that considerations such as “the need for diversity of fuel sources, the uncertainty regarding future fuel costs, the prospect of changes in requirements associated with new laws and other factors not yet known” require that the Company maintain a variety of options for providing electric service to customers.¹¹

Based on the testimony and evidence in the record, the Commission concludes that preserving the opportunity for future nuclear generation is in the public interest.

VI. FINDINGS OF FACT

1. Duke Energy Carolinas is a public utility under the laws of South Carolina and is subject to the jurisdiction of this Commission.

2. Duke Energy Carolinas is engaged in the generation, transmission, distribution, and sale of electric energy at retail in the western portion of South Carolina and the central and western portions of North Carolina. The Company sells electricity at wholesale to municipal, cooperative and investor-owned electric utilities.

3. Duke Energy Carolinas seeks approval of the decision to incur preconstruction costs for two units at the proposed Lee Nuclear Station.

4. Approximately 50,000 new customer accounts have been added and served by the Company each year for the past five years.

¹⁰ May 7, 2008 Transcript. Bradford, Page 286, Ll. 19-25 and Page 287, Ll. 1-11.

¹¹ Pre-Filed Direct Testimony of Nicholas Phillips, Jr. Page 7, Ll. 3-7.

5. The Company's integrated resource plan includes renewable resources, energy efficiency and demand-side management resources, and additional base load, intermediate and peaking generation to meet its estimated cumulative need for 10,680 MW of additional capacity to serve customer load by 2027.

6. The Company has plans to retire approximately 1,000 MW of coal-fired generating units and approximately 500 MW of gas/oil units.

7. Duke Energy Carolinas currently operates seven units at its three nuclear stations as part of its generation portfolio.

8. The Lee Nuclear Station would be constructed in Cherokee County, South Carolina.

9. The Company has selected the Westinghouse AP1000 reactor for the technology to be implemented at the facility.

10. Each of the two proposed units has an anticipated generation capacity of 1,117 MW.

11. The projected annual capacity factor of the facility is expected to exceed 90% based upon current Duke Energy Carolinas nuclear fleet performance.

12. On November 15, 2007, the Company filed its most recent Annual Plan in Commission Docket No. 2005-356-E.

13. The 2007 Annual Plan identifies the need for capacity additions to meet future customer demand.

14. The Commission finds that preserving the nuclear energy option is reasonable in order to provide electric service to South Carolina citizens.

15. Duke Energy Carolinas' estimate for additional needed capacity of 7,020 MW by 2018 is reasonable.

16. The Company has initiated site restoration and development at the Cherokee County site.

17. Site preparation work such as dewatering, cleanup of the excavated area, and site remediation has been conducted at the Lee nuclear site.¹²

18. The Company continues to incur costs associated with demolition and removal of unusable structures, site security, utilities, engineering for bringing water, sewer and railroad to the site.¹³

19. The Commission makes no finding in this matter as to what costs qualify as "preconstruction costs".

20. Duke Energy Carolinas has made no final determination to construct the Lee Nuclear Station.

21. The Commission finds that it is prudent for Duke Energy Carolinas to incur preconstruction costs for the Lee Nuclear Station considering the prospect for future carbon restraints, expected load growth, and retirement of existing capacity.

VII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to determine the prudence of the Company's decision to incur preconstruction costs for the facility pursuant to S.C. Code Ann. § 58-33-225.

¹² May 12, 2008 Transcript. Jamil, page 86 Ll. 6-9. Witness Jamil refers to the Company's Third Supplemental Response to FoE's discovery request.

¹³ May 12, 2008 Transcript. Jamil, page 86 Ll. 11-16. Witness Jamil refers to the Company's Third Supplemental Response to FoE's discovery request.

2. Duke Energy Carolinas has demonstrated by a preponderance of evidence that it is prudent to incur preconstruction costs for the Lee Nuclear Station.

3. The Commission notes that S.C. Ann. §58-33-110 requires that an electric utility obtain a certificate from this Commission before commencing the construction of a major utility facility. As indicated in findings of fact 16-18, the Company has conducted certain activities at the site of the proposed Lee Nuclear Station. The question of whether the Company should have obtained a certificate prior to conducting those activities has not been addressed by the parties and is beyond the scope of this proceeding. Issues arising under §58-33-110 and related provisions will be addressed in a subsequent proceeding and will not be affected by this order. In any such subsequent proceeding the Company shall bear the burden of showing that it has complied with §58-33-110.

4. The Commission makes no determination of prudence or recoverability regarding specific items of cost.¹⁴

IT IS, THEREFORE, ORDERED THAT:

1. The Company may incur preconstruction costs for the Lee Nuclear Station in order to preserve nuclear generation as an option for the 2018 timeframe.

2. No decision is reached regarding any costs incurred for clearing of land or excavation which will be the subject of a future siting proceeding.

3. This Order shall remain in full force and effect until further Order of the Commission.

¹⁴ S.C. Code Ann. §58-33-225 (D).

BY ORDER OF THE COMMISSION:

G. O'Neal Hamilton, Chairman

ATTEST:

C. Robert Moseley, Vice Chairman

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2007-440-E

IN RE:

Application of Duke Energy Carolinas, LLC)	
for Approval of Decision to Incur Nuclear)	CERTIFICATE OF
Generation Pre-Construction Costs for the Lee)	SERVICE
Nuclear Station in Cherokee County)	

This is to certify that I, Pamela J. McMullan, have this date served one (1) copy of the **PROPOSED ORDER** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

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Kodwo Gharthey-Tagoe, VP Legal, State Regulation
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Pamela J. McMullan

May 23, 2008
Columbia, South Carolina